

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ORDER

On August 8, 2016, United States Magistrate Judge Bernard M. Jones issued a Report and Recommendation, recommending that plaintiff's complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief under 42 U.S.C. § 1983 may be granted. Also, Magistrate Judge Jones recommended that the dismissal should be counted as a "strike" pursuant to 28 U.S.C. § 1915(g) and that Plaintiff's Motion to Appoint Counsel (doc. no. 6) be denied. Magistrate Judge Jones specifically advised plaintiff of his right to file an objection to the Report and Recommendation by August 29, 2016 and that failure to make timely objection waives the right to appellate review of the factual and legal issues therein addressed.

The record reflects that the Report and Recommendation was returned as undeliverable on August 15, 2016. LCvR 5.4(a) requires a *pro se* litigant to notify the court of mailing address changes and provides that papers sent by the court will be deemed delivered if sent to the last known address given to the court. The Report and Recommendation was sent to plaintiff's last known address. Therefore, it is deemed delivered pursuant to LCvR 5.4(a). Because plaintiff has not objected to the

recommended ruling within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Bernard Jones on August 8, 2016 (doc. no. 9) is **ACCEPTED**, **ADOPTED**, and **AFFIRMED**. Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief under 42 U.S.C. § 1983 may be granted. The dismissal of plaintiff's complaint is counted as a "strike" pursuant 28 U.S.C. § 1915(g). Plaintiff's Motion to Appoint Counsel (doc. no. 6) is **DENIED**.

DATED August 30, 2016.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE